

Summary of Comments and Responses to 15-Day Comment Period Ending August 30, 2002

Privacy of Nonpublic Personal Information

Comment Source	Section	Summary of Comment	Response	Revisions Needed
AAI-3	Not specified	Supports revised language of “nonpublic” personal information	Noted. No response is necessary.	No
AAI-6	Not specified	Proposed regulations are inconsistent with GLBA, Insurance Information and Privacy Act, and NAIC model regulation and there is no statutory authority.	Noted as general concerns. Insufficient detail to respond further. However, the Department disagrees that the regulations are inconsistent with the referenced laws and there is no statutory authority to adopt the regulations.	No
AIA-1	Not specified	Wants to wait until California’s legislature has concluded its review of Senate Bill 773.	Decline to accept. The legislature has ended the session without passing SB 773. In addition, 15 U.S.C. §6805 requires adoption of regulations now to preserve greater privacy protections permitted by GLBA.	No
ACLHIC/ACLI/HIAA-1	2689.3 Disclosure of Information	Supports the current revision of section 2689.3.	Noted. No response is necessary.	No

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Metlife-9	2689.3 Disclosure of Information	Suggests replacing the double-negative of “nonpublic personal information shall not be disclosed in a manner not permitted by California law or these regulations” with “A licensee shall disclose nonpublic personal information, as defined herein, only as permitted by this regulation and other applicable laws.”	Decline to accept. The meaning is easily understood by those persons directly affected by these regulations, without the need for further change.	No.
ACLHIC/ACLI/ HIAA-4	2689.4(a) “clear and conspicuous”	Objects to prescribed type point, sentence length, Flesch test and unspecified other items because they require a California-specific notice.	Decline to accept. Comments related to type size, sentence length and the Flesch test do not pertain to changes in the proposed regulations, and are thus not timely. Guidelines for web sites have been changed, however, as a result of previous comments that a licensee cannot control type size because of technical issues such as variations in browsers. To accommodate this input, a web site notice is “designed to call attention” if it is in a type size no smaller than the standard text on a licensee’s web site. This is reasonably related to the purpose of assuring that privacy notices are easy to read.	No.

Comment Source	Section	Summary of Comment	Response	Revisions Needed
Metlife-2	2689.4(a)(vii) Flesch Score	Suggests adding option that licensee can request the Department to review its notice and determine its readability.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations.	No.
Metlife-3	2689.4(a)(vi) clear and conspicuous	Wants to delete requirement that if the privacy notice is not on the front page of a multi-page form, a prominent notice must appear on the front directing the reader's attention to where the privacy notice may be found. Otherwise, insurers may have to revise application forms indicating that a privacy notice is included in the application.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations.	No.
AIA-2 NAII/ACIC-2	2689.4(c)(iv) definition of consumer	Objects to including claimants and references to commercial lines in definition of consumer because there is no statutory authority. Similar comment. Wants to delete references to personal injury claimants against a commercial liability policy and worker's compensation claimants.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations. Please see previous comments in the rulemaking file.	No.
NAII/ACIC-1	2689.4(c) definition of consumer	§2689.4(c) only gives examples. It should be specific.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations. Moreover, the definition follows the NAIC model regulation for uniformity.	No.

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NAII/ACIC-3	2689.4(c)(v) definition of consumer	Wants to delete reference to worker's compensation claimant in §2689.4(c)(v) because it is inconsistent with §2689.4(c)(iv).	Decline to accept. Misinterprets these subsections because they are not inconsistent. Additionally, the comment is not timely because it does not pertain to a change in the proposed regulations.	No.
ACLHIC/ACLI/ HIAA-2	2689.4(d)(vi) definition of customer	Supports the restoration of language in §2689.4(d)(vi) related to lapsed or dormant policies.	Noted. No response is required	No
Farmers-1	2689.4(d)(vi) definition of customer	Objects to reinstated language about a policyholder not having communicated with a licensee for 12 months because licensees must now send privacy notices until the 12 month period expires. Also, this provision contradicts §2689.4(d)(iii) which provides an example of someone who is not a customer as someone who is no longer a current policyholder. Concerned that §2689.4(d)(vi) implies that a consumer continues to be a customer 12 months after their policy goes out of force. Wants to delete subsection.	Decline to accept. Language was restored in response to previous comments from life insurers whose policyholders are inactive or dormant, unlike those of property and casualty insurers, and would be confused to receive subsequent privacy and opt out notices. The revision is reasonably related to clarifying a licensee's obligations and consumers' rights for the purpose of assuring compliance with privacy protections.	No.

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AIA-3	2689.4(d)(viii) good faith attempt to obtain valid address	Objects to reinserted requirement that a licensee make a good faith attempt to obtain a current valid address for insureds whose last known address is deemed invalid.	Decline to accept. This requirement was reinstated in response to previous comments objecting to its deletion. The requirement is reasonably related to the purpose of informing a consumer of a licensee's information-sharing practices so he or she can make knowledgeable choices.	No.
AIA-4 Metlife-8 NAII/ACIC-4	2689.4(d)(viii) remove consumer names from marketing list	Objects to requirement that licensees annually remove a consumer's name from marketing lists when his/her address has been deemed invalid. Similar comment. Wants to delete requirement. Similar comment.	Decline to accept. Regulations changed the list removal requirement from 60 days to annually. This is a reasonable requirement to further the purpose of protecting a consumer's privacy when an invalid address prevents that consumer from exercising an opt out. An annual requirement is reasonable because notices must be provided annually.	No.
NAII/ACIC-8	2689.4(f) definition of "financial product"	There is no need to define this term because it is not used in the regulations.	Decline to accept. The term helps illustrate the definition of financial institutions and financial activities which are governed by GLBA, and implemented in the regulations.	No.

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<p>ACLHIC/ACLI/ HIAA-5</p> <p>NAII/ACIC-6</p>	2689.4(i) definition of “nonpublic personal information”	<p>Wants to delete the third paragraph of §2689.4(i).</p> <p>Similar comment. Wants to delete the third and fourth paragraphs of §2689.4(i).</p>	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations. Please see previous comments and responses in the rulemaking file.	No
NAII/ACIC-5	2689.4(i) definition of “nonpublic personal information”	Wants to add statement that nonpublic personal information does not include privileged information.	Decline to accept. The regulation refers to CIC §791.02(s) which includes this statement and the regulation should not repeat statutory language.	No.
ACLHIC/ACLI/ HIAA-6	2689.4(j) definition of “opt-in”	Wants to add “except as provided in “California Insurance Code Section 791.13”	Decline to accept. The definition already refers to “certain” information, and not all information.	No.
NAII/ACIC-7	2689.4(j) definition of “opt-in”	Wants to delete term because it is not used in the regulation.	Decline to accept. The definition was added in response to previous comments from consumer groups. It is helpful to contrast with the term “opt-out” which is used in the regulations.	No

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ACLHIC/ACLI/ HIAA-7	2689.4(k) definition of “opt-out”	Wants to add “except as provided in “California Insurance Code Section 791.13”	Decline to accept. The definition already refers to “certain” information, and not all information.	No.
ACLHIC/ACLI/ HIAA-8	2689.5(a) initial privacy notice	Wants to delete “claimant, or beneficiary” because it might cause confusion since the definition of “consumer” already references those terms.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations.	No.
Metlife-10		Similar comment.		
AAI-5	2689.5 Initial privacy notice	Supports revisions in §2689.5 and §2689.6 to allow insurers flexibility to use separate California and national privacy notices or a combined form.	Noted. No response is necessary.	No
AIA-8	2689.5 initial privacy notice	Recommends allowing licensees option of sending separate notices that comply with GLBA and §791 or combining two notices into one.	Decline to accept. Misinterprets regulation. These regulations already permit the option of providing separate or combined California and GLBA notices.	No.
NAII/ACIC-9	2689.5(a) initial privacy notice	The first paragraph is not clear and should be deleted.	Decline to accept. The language was added to address previous comments by life insurers to permit use of separate or combined notices to satisfy statutory, regulatory, and GLBA requirements. It conveys clear meaning.	No.

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NAII/ACIC-10	2689.5(c)(2) oral notice	Wants to reinstate language that indicated that a licensee provide an abbreviated notice orally when a customer relationship is entered into by phone.	Decline to accept. The change was made in response to previous public comments. It is reasonable to require a licensee to inform an individual of its privacy policies before the consumer makes a decision to become a new customer. The amendment does not impose onerous notice requirements on licensees.	No.
NAII/ACIC-11	2689.6 annual privacy notice	The first paragraph is not clear and should be deleted.	Decline to accept. The language was added to address previous comments by life insurers to permit use of separate or combined notices to conform to statutory requirements, regulatory requirements, and GLBA requirements.	No.
ACLHIC/ACLI/ HIAA-9	2689.7 information in privacy notices	Wants to change each reference to “nonpublic personal information” to “nonpublic personal financial information”	Decline to accept. Privacy notices must adequately and accurately describe a licensee’s information practices.	No.

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<p>ACLHIC/ACLI/ HIAA-10</p> <p>AIA-6</p> <p>Metlife-4</p> <p>NAII/ACIC-12</p>	2689.7(a)(5) information in privacy notices	<p>Wants to delete phrase “and the law does not allow customers to restrict that disclosure” so that a national GLB notice can be used.</p> <p>Similar comment. This requirement is a departure from the NAIC model regulation which allows licensees to state they share nonpublic personal financial information as permitted by law, and it would generate consumer confusion.</p> <p>Wants to delete phrase because an insurer can decide on its own to permit customers to restrict information-sharing with affiliates.</p> <p>Similar comment. Wants to delete phrase because it is unnecessary and not authorized.</p>	<p>Decline to accept. The phrase was added in response to previous comments by consumer groups. It is accurate and reasonably related to the purpose of informing consumers of their rights regarding nonpublic personal information gathered in connection with insurance transactions. The phrase only applies if the licensee wishes to disclose information.</p> <p>Consumer groups believe it will help consumers understand that certain information may be disclosed for certain purposes whether or not the consumer agrees.</p>	No.
ACLHIC/ACLI/ HIAA-3	2689.7(a) (9)and (11) information in privacy notices	Support the revision that adds “if applicable” to 2689.7(9) and (11).	Noted. No response is necessary.	No

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Metlife-5	2689.7(a) information in privacy notices	Objects to including requirements in subsections 9,10,11 of §2689.7(a) that reflect requirements of the “old model act” thereby making Metlife unable to use a separate “GLB notice” and “old model act notice.”	Decline to accept. Misinterprets regulations. §2689.5 and 2689.6 make clear that a licensee has the option to provide separate or combined notices that satisfy CIC §791.04 and these regulations as well as separate or combined notices that satisfy GLBA and California law.	No.
Metlife-6	2689.7(c) abbreviated notice	Objects to requirement that an abbreviated notice be clear and conspicuous and contain an opt-out notice.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations. Additionally, requiring an abbreviated notice to be clear and conspicuous is a reasonable requirement to further the purpose of assuring that a consumer understands a licensee’s information sharing practices. An opt-out notice is only required “if applicable.”	No.

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NAII/ACIC-13	2689.7(c)(2) abbreviated notice	§2689.7(c)(2) is confusing and should be amended.	Decline to accept. Upon careful consideration, the section is clear. In addition, the comment is not timely because it does not pertain to changes in the regulations. The only changes made were merely clarifying as to the notice referred to.	No.
AAI-4	2689.8(a) opt out methods	Supports clarification that licensee must provide self-addressed postage paid return envelope or toll-free telephone number.	Noted. No response is necessary.	No
AAA-1	2689.8(a) opt out methods	Wants to delete requirement that licensee provide a postage prepaid envelope or toll-free telephone number because these expenses increase the burden on small and medium-sized producers. Plus, most phone calls to the producer are local calls, so a toll-free number is not necessary.	Decline to accept. This comment is not timely because it does not pertain to a change in the further revised proposed regulations.	No

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Metlife-7	2689.8(a) opt out methods	Objects to requirement that a licensee must provide both a postage prepaid envelope and a toll-free telephone number.	Decline to accept. Misinterprets regulation. A licensee must provide a self-addressed postage prepaid envelope <i>or</i> toll-free telephone number. Providing a cost-free method for consumers to opt out is reasonably related to the purpose of making it easy for consumers to exercise their right to opt out.	No.
ACLHIC/ACLI/ HIAA-11	2689.8(b) opt out notice	Wants to delete requirement that an opt out notice be placed as the first page of a mailing when mailed with information that is not a bill or renewal offer.	Decline to accept. This comment is not timely because it does not pertain to a change in the proposed regulations.	No.
CCIP-1	2689.8(c) “shopping around”	Wants producers to be exempt from notice requirements when “shopping around” renewal or replacement coverage.	Decline to accept. Notice and opt out requirements have not changed in these proposed regulations, thus the comment is not timely. Additionally, the notice requirements are reasonably related to further the purpose of informing the consumer when nonpublic personal financial information will be disclosed and, if applicable, giving the consumer a choice whether to so disclose .	No.

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ACLHIC/ACLI/ HIAA-12	2689.8(d) opt out notice	Wants to add at the beginning of §2689.8(d) “except as permitted by Section 791.13(a) through (j) and (l) through (r).”	Decline to accept. Section 2689.8(a) already clarifies that this section applies only if a licensee is required to provide an opportunity to opt out.	No.
AAI-2	2689.10(a) Delivery of Notices	Suggests inserting “or” after each specified example so it is clear that each example is separate and individual.	Decline to accept. This is a logical reading of the current language and further clarification is not needed.	No.
AAI-3	2689.10(a) Delivery of Notices	Wants to amend §2689.10(a) to read “A licensee may not reasonably expect that a consumer will receive actual notice if it ... (2) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically, <i>unless the consumer agrees, in writing prior to sending the notice, to accept communications from the licensee electronically.</i> ”	Decline to accept. Section 2689.10(a) already specifies that notices shall be provided in writing or, if the consumer agrees, electronically. Additionally, this comment is not timely because it does not pertain to a change in the proposed regulations.	No.

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ACLHIC/ACLI/ HIAA-13	2689.11(b) Disclosure of Medical Record Information	Concerned that §2689.11(b) may be written too broadly to provide the necessary protection of medical record information. Suggests amending to read “This section does not prohibit or restrict the disclosure of nonpublic personal medical record information as permitted by California Insurance Code Section 791.13(a) through (j), (l) for the purpose of auditing, and (m) through (r).” The remainder of the section would become unnecessary.	Decline to accept. After careful consideration, the statute referenced, CIC §791.13, appears adequate in conveying restrictions on disclosures of medical record information and further clarification is not needed.	No.
Metlife-11	2689.11 Disclosure of Medical Record Information	This section is confusing.	Decline to accept. Similar comments were not received. After careful consideration, the meaning of this section is easily understood by those directly affected and does not need further clarification.	No.

Comment Source	Section	Summary of Comment	Response	Revisions Needed
AAI-1	2689.13 Definitions	Wants to clarify that nonpublic personal information does not include information about consumers.	Decline to accept. The change to “nonpublic personal information” was made in response to a previous public comment. Please see previous comments in the rulemaking file. Clarification is not needed because customer is defined in §2689.4(d). Additionally, these regulations follow the similar NAIC model regulations, furthering the goal of uniformity to the extent possible.	No.
ACLHIC/ACLI/ HIAA-14	2689.13 Definitions in Article IV	Define “customer” and “customer information” in the Standards for Safeguarding article.	Decline to accept. The definitions are unnecessary since customer is defined in §2689.4(d)	No
ACLHIC/ACLI/ HIAA-15	Article IV Standards for Safeguarding	Reference to “nonpublic personal information” should be changed to “customer information.”	Decline to accept. The change to “nonpublic personal information” was made in response to a previous public comment. Please see previous comments in the rulemaking file. The proposed regulation is reasonably related to the purpose of clarifying the scope of privacy protection.	No.

Comment Source	Section	Summary of Comment	Response	Revisions Needed
ACLHIC/ACLI/ HIAA-16	Article IV Standards for Safeguarding	Suggests the title of Article IV should be changed to reference “customer” information, not “nonpublic personal information.”	Decline to accept. The heading of this Article is consistent with the focus of the overall proposed regulations. The regulation text specifies that the article applies to customer information.	No.
AIA-7	2689.18(b) Service Providers	Wants to delete example of safeguards that licensees require service providers to comply with various provisions of the Safeguarding Standards.	Decline to accept. The example of requiring third party service providers to take appropriate measures to safeguard the confidentiality of customer information follows the NAIC model regulation and is a reasonable method to further the purpose of protecting nonpublic personal information.	No.
ACLHIC/ACLI/ HIAA-17	2689.22 Non- discrimination	Suggests the first paragraph of §2689.22 should reference nonpublic personal “financial” information.	Decline to accept. §2689.8 already clarifies that only nonpublic personal financial information is subject to opt out.	No.

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<p>ACLHIC/ACLI/HIAA-18</p> <p>AAI-2</p> <p>Metlife-1</p> <p>NAII/ACIC-17</p>	2689.24 effective date	<p>Suggests 12 month delay in effective date.</p> <p>Similar comment. 120 days is not sufficient. Suggests coordinating timing with HHS regulations that take effect in April 2003</p> <p>Similar comment. 120 days is too short to produce a California-specific notice. Suggests 12 months</p> <p>Similar comment. Wants regulations to take effect 12 months after OAL approves them.</p>	Decline to accept. After careful consideration, the Commissioner has determined that a delay of 120 days before the regulations take effect is a reasonable amount of time for licensees to implement the proposed regulations. Licensees have been complying with the provisions of CIC §§791 et seq. since 1981 and the privacy provisions of GLBA since July 2001. Therefore, licensees are already complying with many of the regulations' provisions.	No.

Comment Source	Section	Summary of Comment	Response	Revisions Needed
AIA-5	2689.24 contracts with nonaffiliated third parties	Wants to grandfather existing contracts for two years (2) from effective date of rules similar to the NAIC model regulation because of compliance problems.	Decline to accept. 210 days from the date the proposed regulations are filed with the Secretary of State (90 days from the effective date of the regulations which take effect 120 days after they are filed) is a reasonable period of time to alter provider contracts. The requirement is reasonably related to the purpose of maintaining confidentiality of nonpublic personal information. Additionally, NAIC provisions for grandfathering service agreements ended July 1, 2002.	No.
NAII/ACIC-14	2689.24 contracts with nonaffiliated third parties	The reference to “confidential” nonpublic personal information is a new term and it is not clear if it is different than nonpublic personal information.	Decline to accept. This language was added in response to previous public comments. There is no need for further clarification.	No.
NAII/ACIC-15	2689.24 contracts with nonaffiliated third parties	The Department has no authority to require amendment of existing contracts.	Decline to accept. This requirement follows the NAIC model regulation and GLBA mandate in 15 U.S.C. §6802(b). The requirement is reasonably related to the purpose of maintaining confidentiality of nonpublic personal information.	No.

Comment Source	Section	Summary of Comment	Response	Revisions Needed
NAII/ACIC-16	2689.24 contracts with nonaffiliated third parties	§2689.24 should clarify that it only applies to joint marketing agreements.	Decline to accept. CIC §791 et seq. does not provide an exception for joint marketing agreements.	No.